IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS F. CARLSON, et al.,

Plaintiffs,

v.

COLORADO CENTER FOR REPRODUCTIVE MEDICINE, LLC, et al.,

Defendants.

Case No. 21-cv-06133-MMC

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT; VACATING HEARING

Before the Court is plaintiffs Douglas F. Carlson and Maya Zubkovskaya's "Motion for Leave to Amend Complaint," filed December 22, 2021. Defendants Colorado Center for Reproductive Medicine, LLC, Sarah Macleod, and Angela Fouts-Hyatt have filed opposition, to which plaintiffs have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter appropriate for decision on the parties' respective written submissions, VACATES the hearing scheduled for January 28, 2022, and rules as follows.

Leave to amend should be freely given "when justice so requires." See Fed. R. Civ. P. 15(a)(2). In determining whether leave to amend is appropriate, courts consider the following four factors: "bad faith, undue delay, prejudice to the opposing party, and futility of amendment." See DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987). The factors, however, "are not of equal weight in that delay, by itself, is insufficient to justify denial of leave to amend," see id., and "it is the consideration of prejudice to the opposing party that carries the greatest weight," see Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003); see also DCD Programs, 833

F.2d at 187 (noting "[t]he party opposing amendment bears the burden of showing prejudice").

Here, defendants contend plaintiffs unduly delayed because plaintiffs "should have been aware of the facts underlying their proposed additional allegations at the time the [c]omplaint was filed" (see Opp. at 3:24-25) and "provide no reason that they needed to wait for [d]efendants' Rule [12(b)] Motion to be adjudicated" before amending the complaint (see Opp. at 4:3-5). Plaintiffs, however, have submitted declarations in which they assert they "learned" of the above-referenced facts from documents they received after filing their initial complaint (see Decl. of Douglas F. Carlson in Supp. of Mot. for Leave to Amend Compl. (Amended) ¶¶ 6-18; Decl. of Maya Zubkovskaya in Supp. of Mot. for Leave to Amend Compl. ¶¶ 6-17), and, in any event, as noted, "[d]elay, by itself, is insufficient to justify denial of leave to amend," see DCD Programs, 833 F.2d at 186.

Defendants next contend they "would be prejudiced if [p]laintiffs' Motion is granted," because defendants "have already undertaken substantial effort and expense to litigate this case" and "would likely have to redraft and refile some form of their Rule [12(b)] Motion to Dismiss if [p]laintiffs' proposed First Amended Complaint is filed." (See Opp. at 4:8-14.) The proposed First Amended Complaint, however, adds no new parties, no discovery has been conducted with respect to the merits of plaintiffs' claims, and a trial date has yet to be scheduled. See Adam v. Hawaii, 235 F.3d 1160, 1164 (9th Cir. 2001) (finding no prejudice where amended complaint "[did] not add new parties" and "there ha[d] been no discovery, nor ha[d] a trial date been set"). Moreover, as plaintiffs point out, "if plaintiffs had filed an amended complaint as of right within 21 days after defendants filed their Rule 12(b) motion, defendants still would have had to draft and file a new Rule 12(b) motion" directed at the operative complaint (see Reply at 10:5-7); see also Fed. R. Civ. P. 15(a)(1) (providing "[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b)").

Accordingly, plaintiff's motion for leave to amend is hereby GRANTED. Plaintiffs shall file their First Amended Complaint, as a separate document, no later than January

27, 2022.

IT IS SO ORDERED.

Dated: January 20, 2022

MAXINE M. CHESNEY
United States District Judge

United States District Court
Northern District of California